

REMARKS/ARGUMENTS

Claims 1-13 are pending in the present application.

This Amendment is in response to the Final Office Action mailed May 1, 2008. In the Office Action, the Examiner rejected claims 1-3, 5-9, and 11-13 under 35 U.S.C. §103(a). Reconsideration in light of the remarks made herein is respectfully requested.

Rejection Under 35 U.S.C. § 103

In the Final Office Action, the Examiner rejected claims 1-3, 5-9, and 11-13 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,157,719 issued to Wasilewski et al. ("Wasilewski") in view of U.S. Patent No. 6,981,272 issued to Morinaga et al. ("Morinaga") in view of U.S. Patent No. 7,248,776 issued to Boston et al. ("Boston"). Applicant respectfully traverses the rejection and submits that the Examiner has not met the burden of establishing a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP* §2143, p. 2100-126 to 2100-130 (8th Ed., Rev. 5, August 2006). Applicant respectfully submits that there is no suggestion or motivation to combine their teachings, and thus no *prima facie* case of obviousness has been established.

Furthermore, the Supreme Court in *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966), stated: "Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined." *MPEP* 2141. In *KSR International Co. vs. Teleflex, Inc.*, 127 S.Ct. 1727 (2007) (Kennedy, J.), the Court explained that "[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was

an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” The Court further required that an explicit analysis for this reason must be made. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR 127 S.Ct.* at 1741, quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). In the instant case, Applicant respectfully submits that there are significant differences between the cited references and the claimed invention and there is no apparent reason to combine the known elements in the manner as claimed, and thus no *prima facie* case of obviousness has been established.

As admitted by the Examiner, Wasilewski does not disclose “wherein the use control metadata include the CCI, the BF and the RI, determines from the CCI whether a broadcasting content can be copied freely, copied one time only and never copied, identifies from the BF whether the content is a broadcasting content, and indicates in the RI a length of time that the broadcasting content can remain stored in a hard disk of a receiver,” as recited in claims 1, 7, and 13 (Office Action, pages 4, 8, and 11).

The Examiner alleges that Morinaga discloses “control data whether a broadcasting content can be copied freely, copied one time only and never copied” (Office Action, pages 4, 8, and 12) and Boston discloses “retention information including a length of time that the broadcasting content can remain stored in a hard disk of a receiver” (Office Action, page 5, 9, and 13).

Applicant respectfully submits that the Examiner fails to establish a *prima facie* case of anticipation because Wasilewski in view of Morinaga and in further view of Boston does not teach or suggest all the claim limitations as recited in independent claims 1, 7, and 13. Specifically, the Examiner does not indicate where the cited references teach or suggest (1) the use control metadata including the CCI, the BF and the RI, and (2) identifying from the BF whether the content is a broadcasting content.

In addition, Morinaga merely discloses a descriptor called digital_copy_control_ descriptor which includes CGMS (copy generation management system) information being added to the contents of a program being broadcasted (Morinaga, col. 3, lines 5-25), not the use control metadata determining from the CCI whether a broadcasting content can be copied freely, copied

one time only and never copied, as recited in claims 1, 7, and 13. Since the CGMS is merely added to the program contents, the CGMS cannot be equivalent to the CCI (copy control information) which is included in the use control metadata.

Furthermore, Boston merely discloses a retention period 276 which is a field indicating to the personal video recorder (PVR) how long to retain a show in the storage space before deleting the show (Boston, col. 14, lines 64-66), not the use control metadata indicating in the RI a length of time that the broadcasting content can remain stored in a hard disk of a receiver, as recited in claims 1, 7, and 13. The retention period 276 works with the Boolean indications of viewing 248 to indicate to the PVR when to delete the show. If the PVR profile is set such that shows are to be deleted only after they are viewed, the PVR will not delete a show from storage space until the show is viewed, even if the view time is later than the end of the retention period 276 (Boston, col. 14, line 64 to col. 15, line 9). Thus, the show can remain stored beyond the retention period 276. In contrast, the claims recite that the RI indicates the length of time the broadcasting content can remain stored. Accordingly, the retention period 276 cannot be equivalent to the RI.

Moreover, based on the dependency of claims 2, 3, 5, 6, 8, 9, 11, and 12 on independent claims 1 and 7 believed to be in condition for allowance, no further discussion as to the grounds for traverse is warranted.

Therefore, Applicant believes that independent claims 1, 7, and 13 and their respective dependent claims are distinguishable over the cited prior art references. Accordingly, Applicant respectfully requests the rejection under 35 U.S.C. §103(a) be withdrawn.

Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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Date: June 30, 2008

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